



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/709,649

05/19/2004

Jana Rosenblatt

102241-0005

3648

21125 7590 08/17/2007
NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

08/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/709,649	Applicant(s) ROSENBLATT, JANA	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-8,10-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-8,10-13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response filed 6/6/2007 has been considered. Arguments regarding the 35 U.S.C 103 (a) have not been found to be patentable over prior art of record, therefore claims 1, 5-8, 10-13, 15-18 are rejected under the same ground rejection as set forth in the office action mailed 3/6/2007.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 10-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokuni (Japanese Pat. # 09028458A) in view of Chateau (U.S. Pat. # 3,718,145) and Boll et al (U.S. Pat. # 2,043,230).

With regard to claim 1, Kokuni discloses a template for applying simulated eyebrows to a person's face (figs. 1-2) comprising a sheet of material (2) having a shape adapted to be disposed on a portion of a person's face and including upper, lower edges, right and left side edges (see attachment A), a cutout portion formed at a substantial midpoint of the lower edge and having a shape adapted to be positioned around a substantial portion of a person's nose (see attachment A). Kokuni further

Art Unit: 3732

discloses a right eye hole (3) formed between the right edge and a substantial midpoint of the sheet, a left eye hole (3) formed between the left edge and a substantial midpoint of the sheet, a right eyebrow slot (4) formed above the right eye hole and below the upper edge, a left eyebrow slot (4) forming above the left eye hole and below the upper edge (see fig. 1). The right and left eyebrows slots having a desired shape of an eyebrow area to be simulated on a person's face (fig. 2). Kokuni fails to show a vertical line extending from the upper edge to the cutout portion at a substantially midpoint of the sheet, a horizontal line extending from the right eyebrow slot to the left eyebrow slot. Chateau discloses an eyebrow template (12, fig. 1) comprising markings (19 "fleur-de-lis") being in a midpoint of the template. It is noted that fig. 1 shows "fleur-de lis" comprises four leaves, two of which lying on a horizontal direction which defines as a first marking extending from the upper edge of the template to the cutout portion at 18 at a substantially midpoint of the sheet and the other two leaves lying on a vertical direction which defines a second marking extending from the left side of the eyebrow slot to the right side of the eyebrow slot. Boll et al discloses a facial measuring device (figs. 1 and 2) comprising a vertical line (at 150, fig. 2) and a horizontal line (at 156) defining a cross hair as a known way to align the facial features. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the markings as taught by Chateau into the eyebrow template of Kokuni for the purpose of centering the template to facilitate symmetrical application of the eyebrow makeup. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cross hair lines as taught by Boll et al into

Art Unit: 3732

the template of Kokuni in view of Chateau in order to facilitate in centering the lines. In regard to claim 5, Kokuni shows the right and left eyebrow slots each having inner portion (see attachment B) that extends in an upward direction and an outer portion (see attachment B) that extends in a downward direction. In regard to claim 5, Kokuni shows the right and left eyebrow slots each having inner portion (see attachment B) that extends in an upward direction and an outer portion (see attachment B) that extends in a downward direction. In regard to claims 11 and 12, Kokuni in view of Boll et al fail to the sheet of the material being made of flexible material, semi-rigid and being pre-shaped to conform to a portion of a wearer. Chateau discloses the template being made of flexible material (col. 2, lines 61-62). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the flexible material as taught by Chateau into the template of Kokuni in view of Boll et al in order to conform to a portion of the wearer's face. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the sheet being semi-rigid, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claim 13, Kokuni shows positioning a template on a person's face (fig. 2) such that an upper edge of the template being positioned on the person's forehead, a lower edge of the template being positioned on the person's cheekbones, a right edge of the template being positioned on the person's right temple and a left edge of the template being positioned on the person's left temple; the template also having right and left eye holes (3). As

Art Unit: 3732

discussed above, Kukuni in view of Chateau and Boll et al shows a horizontal marking and a vertical marking, therefore, Kokuni inherently shows horizontally aligning the horizontal marking of the template with the person's nose and vertically aligning the vertical marking of the template with the person's eyes and ears. Kokuni also discloses a step of applying a simulated eyebrow (6, fig. 2) within right and left eyebrow slots (4) formed in the template above the right and left eye holes. In regard to claim 15, Kokuni discloses using an eyebrow pencil (fig. 2) to draw eyebrows with the right and left eyebrow slots. In regard to claims 16-17, Kokuni discloses the template being positioned on a person's face by using a strap (5, page 2, paragraph 12 of the attached translation). In regard to claim 18, as discussed above in claim 1, Kokuni discloses an eyebrow template comprising all the claimed limitations as discussed above in claim 1; Kokuni in view of Boll et al do not show a plurality of templates and each having a size that differs relative to one another and a first marking extending from the upper edge to the cutout portion at a substantially midpoint of the sheet, a second marking extending from the right eyebrow slot to the left eyebrow slot. Chateau as discussed above shows a first and second markings, Chateau further discloses a kit of eyebrow stencils comprising a plurality of eyebrow templates and each having a size that differs relative to one another (col. 3, lines 70-74). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the markings as taught by Chateau into the eyebrow template of Kokuni in view of Boll et al for the purpose of centering the template to facilitate symmetrical application of the eyebrow makeup and the way of providing a plurality of eyebrows templates and each having a

size that differs relative to one another as taught by Chateau into the device of Kokuni in view of Boll et al in order to provide the user with multiple selections of templates.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kokuni in view of Chateau and Boll et al as applied to claim 1 above, and further in view of Hirzel (IDS cited reference).

With regard to claim 9, Kokuni in view of Chateau and Boll et al disclose an eyebrow template comprising all the claimed limitations in claims 1, 7-8 as discussed above except for the connecting element having a hole formed adjacent each of the right and left edges of the sheet. Hirzel discloses an eyebrow template (fig. 2) comprising a sheet of material (10) having a right (at 75, fig. 1) and left edges, a fastening element (24) and a connecting element having a hole (18, fig. 1) formed adjacent to each of the right and left edges for effective receive the fastening element. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the connecting hole as taught by Hirzel into the eyebrow template of Kokuni in view of Chateau and Boll et al in order to interchange a variety of fastening elements.

Response to Arguments

Applicant has argued that Boll is a non-analogous art and is not reasonably pertinent to the problem to be solved. Applicant is noted that Boll was applied in combination of Kokuni in view of Chateau to show the particular design of the alignment

Art Unit: 3732

feature such as cross-hairs, and since Kokuni in view of Chateau shows the alignment features for eyebrow template as admitted by Applicant, one of an ordinary skill in the art would reasonably use the particular cross-hairs design as taught by Boll to get an equivalent result.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
August 15, 2007